



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: May 18, 2010

TO: Mayor and Councilmembers

FROM: Planning Division, Community Development Department

SUBJECT: Introduction Of Medical Marijuana Storefront Collective Dispensary Ordinance

RECOMMENDATION:

That Council introduce and subsequently adopt, by reading of title only, An Ordinance of the Council of the City of Santa Barbara Amending the Municipal Code by Revising Chapter 28.80 and Establishing Revised Regulations and Procedures for Medical Marijuana Storefront Collective Dispensaries.

EXECUTIVE SUMMARY:

The Ordinance Committee has recently held four hearings on additional City ordinance amendment provisions for the permitting of medical marijuana dispensaries within the City, and it has reached a consensus on certain amendments. The major components are of the consensus are the following: 1. Medical marijuana may be distributed via storefront locations only if storefront dispensaries operate as collectives; 2. a maximum of five storefront collectives in seven possible areas of the City; 3. Collective membership is limited to the tri-county area; 4. a 24-hour waiting period to join a collective; 5. Membership, cultivation and medical records must be kept (All records except medical records to be inspected by City Staff with limited notice and medical records inspection requires search or inspection warrant); 6. a permit decision by Staff Hearing Officer, with a possible appeal directly to Council; and 7) Revisions previously recommended by Ordinance Committee. A public hearing before the Planning Commission is scheduled for May 13, and the Planning Commission recommendations will be presented to Council during the oral staff presentation.

DISCUSSION:

Previous Council Direction

On February 23, 2010, the Council reviewed a draft revision to the Medical Cannabis Dispensary Ordinance, and directed the Ordinance Committee to consider all of the following:

1. Possible revisions to the latest draft version of the Ordinance regulating Medical Marijuana Dispensaries in order to reduce the maximum number of dispensaries within the City to five (5),
2. Providing that major alcohol and drug rehabilitation facilities would be protected uses and adjusting the allowed areas for dispensaries appropriately,
3. Allowing dispensaries in the Cottage Hospital area, and
4. Further defining the operational parameters of storefront collective/cooperatives in order to ensure compliance with Proposition 215 and the state SB 420 statutes.

The Ordinance Committee met on March 16th, March 30th, April 13th, and April 27th, came to consensus on these and other issues and made the following recommendations to Council in the attached ordinance for introduction.

Ordinance Committee Recommendations

1. Rename the ordinance from the "Medical Cannabis Dispensary Ordinance," to the "Medical Marijuana Storefront Collective Dispensary Ordinance."
2. Medical marijuana can only be made available to Qualified Patients and Primary Caregivers at storefront locations if such locations are operated as "collectives or cooperatives" in the manner required by SB 420.
3. Allow a total of five (5) storefront collective dispensaries within the City. This number was a compromise between Committee members who wanted more and Committee members who wanted fewer.
4. Allow storefront collective dispensaries in seven possible areas of the City (Maps showing the areas are included as Attachments 1-6):
 - a. Outer State
 - b. Upper De la Vina
 - c. Mission Street
 - d. Downtown West
 - e. Downtown East
 - f. Milpas
 - g. West Pueblo Medical (formerly referred to as the Cottage Hospital area)

The Ordinance Committee discussed the elimination of the Downtown West and Downtown East areas, but did not reach consensus to do so.

5. Prohibit storefront dispensaries within 500 feet of the 17 highest priority drug and alcohol recovery facilities within the City.

6. Restrict storefront collective dispensary membership to residents of Santa Barbara, San Luis Obispo and Ventura Counties. This was a compromise of the Ordinance Committee members, as one wanted membership to be from throughout the state, another wanted City residents only, and the third wanted Santa Barbara County residents only. This compromise was reached in conjunction with also requiring a 24 hour waiting period before becoming a collective member.
7. Require a 24 hour initial waiting period in order to join a storefront collective and restricting individuals to membership in one collective at a time. The purpose of this requirement is to attempt to discourage medical marijuana tourism, wherein residents of the tri-county area would come to Santa Barbara just to obtain medical marijuana.
8. Specific cultivation, membership, and financial records of the collective are required to be maintained, with possible inspection by specified City Staff on limited prior notice.
9. Member medical records may be inspected by City Staff, but only with a search warrant or inspection warrant.
10. Dispensary inspection of the dispensary premises with limited notice by CDD City Staff.
11. Continue the current process of initial review by the Staff Hearing Officer, but have appeals heard by the Council, bypassing the Planning Commission. The current process requires a decision by the Staff Hearing Officer, with an appeal to the Planning Commission. The previous revisions proposed adding a Council appeal of the Planning Commission decision.

The Ordinance Committee members felt that while an administrative approval might be appropriate, an appeal to Council was necessary. Since there is no current process for an administrative approval to be appealed to Council, and there are current processes wherein discretionary approval are appealed directly to Council (e.g. Architectural Board of Review), the Ordinance Committee recommended that the initial decision should remain with the Staff Hearing Officer, but that any appeal would be heard by the Council.

12. All amendment recommendations previously forwarded to Council, including the following:
 - a. Prohibit storefront dispensaries within 1000 feet of Casa Esperanza.
 - b. Prohibition on storefront collectives in mixed-use buildings, where the residential units are condominiums, and the project is existing at the time the revisions are adopted.
 - c. Allowable dispensary areas are described by block face, rather than by prohibition radii.

- d. Security provided by a separate "Private-party operator" security company, which is licensed by the State.
- e. More discretion for the Staff Hearing Officer, and Council on appeal, in the form of changes to the criteria for issuance (see SBMC §28.80.0070.B.6. and B.10).
- f. Annual review of the storefront collective dispensary operation for legal compliance by the Police and Community Development Departments.
- g. Reduce the amortization period of six months from the effective date of the ordinance for the closure of those dispensaries which existed prior to the adoption of the current ordinance. If these ordinance revisions are adopted as recommended by the Ordinance Committee, the effect on pending, approved, appealed, legally operating and nonconforming dispensaries would be as outlined in Attachment 7. Most pending applications would not be allowed to proceed because their locations are no longer allowable. One pending application would not be allowed to move forward because it's in an existing, mixed use building with residential condominiums. In those areas where multiple applications are pending, the application deemed complete first would be allowed to go to hearing first. If the first complete application were to be approved, the remaining applications would then be precluded from approval. If it were not approved, then the next complete application would be allowed to move forward in the permitting process.
- h. Minor and other miscellaneous changes to the ordinance language.

MMDO Suspension Ordinance Status

The attached ordinance contains a section that repeals the MMDO suspension on the effective date of these revisions, which is 30 days after the adoption of the ordinance. Currently, pending applications are being processed through application completeness. Upon repeal of the suspension, staff will schedule complete applications for hearings, and terminate applications that are precluded because of the newly adopted revisions. Additionally, the six month amortization period will begin. During that time, permitted dispensaries must update their operational plans, and nonconforming dispensaries must either obtain a permit or close down.

BUDGET/FINANCIAL INFORMATION:

The City will charge an hourly rate for the processing of Medical Marijuana Dispensary Permits, so that the full cost of processing the permits and for each annual review will be covered.

ATTACHMENTS:

1. Outer State Street Area map
2. Upper De la Vina Area map
3. Mission Area map
4. Downtown East and West Area map
5. Milpas Area map
6. West Pueblo Medical Area map
7. Table showing status of dispensaries

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APPROVED BY: City Administrator's Office